

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-146

March 18, 1998

DAVID E. KOHLER V. CENTRAL MAINE
POWER COMPANY
Appeal of CAD Decision # 1998-5475

ORDER DENYING APPEAL

WELCH, Chairman; NUGENT and HUNT, Commissioners

David E. Kohler has appealed a decision of the Consumer Assistance Division (CAD) in favor of Central Maine Power Company (CMP). An "appeal" from the Consumer Assistance Division is a request to the Commission that it commence an investigation pursuant to 35-A M.R.S.A. § 1303. Mr. Kohler had complained about a rate contained in Central Maine Power Company's schedule of rates that requires all residential customers to pay a minimum bill of \$11.84 per month, even if they do not consume any electricity during the month. Mr. Kohler is a seasonal customer and does not consume electricity during many months of the year. The CAD ruled that it has no authority to order CMP to not charge and enforce its filed rate. We decline to open an investigation and we therefore deny Mr. Kohler's appeal.

Under the "filed rate doctrine," a utility is not permitted to charge customers more or less than the rates that are contained in their rate schedules that are on file with the Commission. 35-A M.R.S.A. § 309(1). The minimum monthly rate that Mr. Kohler has complained about is part of CMP's filed rate for residential service, approved by the Commission. The CAD is therefore correct that it has no authority to order CMP to charge Mr. Kohler a different rate.

As noted above, Mr. Kohler in effect has requested the Commission to commence an investigation into the reasonableness of the rate in question. Mr. Kohler states that he does not object to that portion of the minimum charge that covers "overhead" costs, but that he objects to paying for the 100 kWh of generation and energy that he does not use. He claims that he and other summer camp owners are "subsidizing full-time residents who are using power during the winter months."

35-A M.R.S.A. § 301 requires all rates to be "just and reasonable." In the late 1970s we approved a "customer charge" that allowed CMP to recover fixed "customer" costs (meters, drop line, billing). That charge was a fixed amount and did not include any electric energy. Shortly thereafter, the Legislature enacted 35-A M.R.S.A. §3103 (originally 35-A M.R.S.A. §96). Section 3103(1) states:

Utilities required to provide minimum charge. Any electric utility serving more than 5,000 customers which has a residential rate combining energy and demand costs in a single rate which neither declines nor increases but is flat as consumption increases shall recover its customer costs through the same rate. As part of that rate, each such electric utility shall provide for a minimum charge to include such an amount of kilowatt hours as the commission shall determine.

Thus, if a utility has a "flat rate" within the meaning of the statute, it cannot have a separate customer charge; it must "recover its customer costs through the same rate." In addition, a utility with such a rate "shall provide for a minimum charge" that includes a certain amount of usage, as determined by the Commission. After the enactment of the statute, CMP's residential Rate A was modified to include a minimum charge. The minimum charge includes 100 kWh of electric energy and is set at the amount (\$11.84) that is equal to the price for 100 kWh, using the rate (\$0.1184 per kWh) for usage between 100 and 400 kWh.

Arguably, section 3101(1) no longer applies to CMP's Rate A; that rate may no longer be "flat" within the meaning of the statute because the per kWh rate now differs at different usage levels. After implementing the minimum charge, CMP implemented an "inclining block" rate design. Thus, usage over 400 kWh increases to \$.1479 per kWh under Rate A. Nevertheless, for the reasons stated below, we decline to open an investigation.

As a general policy, we would not consider the reasonableness of a rate design provision such as the minimum monthly rate outside of the context of a rate design proceeding in which multiple parties having an interest in the outcome might participate. In addition, CMP's most recent long-run marginal cost study indicates that "customer costs" are only slightly less than \$11.84 per month. Most of CMP's rates are not priced exactly at long-run marginal costs, but at "equal percentage marginal costs" (EPMC); rates are therefore set above long-run marginal cost to recover the difference between embedded and marginal costs. Thus, even if a separate customer charge were implemented that did not include a usage allowance (as Mr. Kohler seems to prefer), it probably would exceed \$11.84. We also note that the customer costs discussed here do not include any costs of distribution (poles, wires, transformers). Like customer costs, distribution costs are largely fixed; the costs do not vary greatly with usage. Distribution facilities are in place to serve customers on a year-round basis and an electric utility incurs the costs of those facilities regardless of whether electric power flows over them to customers. In short, we see no basis for concluding that the \$11.84 minimum charge contains any

"subsidy" that flows from seasonal customers to year-round customers.

For the foregoing reasons, we decline to open an investigation into the reasonableness of residential Rate A or the minimum charge that is part of that rate.

Accordingly, we

O R D E R

Dated at Augusta, Maine this 18th day of March, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Hunt

COMMISSIONER ABSENT: Nugent

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.